

EARL M. CRANSTON

IBLA 88-533

Decided July 12, 1990

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting a high bid at a competitive oil and gas lease sale. M 77031.

Reversed and remanded.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Competitive Leases--Regulations: Generally

Payment of the balance of the bonus bid at a competitive lease sale is properly construed as timely where payment is received by BLM on the seventh working day after the lease sale within the time allowed by both the regulations in effect at the time of the sale and the proposed regulations promulgated prior to the sale.

APPEARANCE: Earl M. Cranston, Billings, Montana, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Earl M. Cranston has appealed a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 10, 1988, which rejected his high bid for Parcel No. 229 made at the competitive oil and gas lease sale held in Billings, Montana, on May 26, 1988 (M 77031). BLM rejected the bid because the balance of the bonus bid amount of \$360 was not received "by the close of business (4 p.m.) on June 6, 1988."

The competitive lease sale was conducted pursuant to procedures implementing changes in the oil and gas leasing system made by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), P.L. 100-203, § 5102, 101 Stat. 1330-256, amending 30 U.S.C. § 226(b)(1) (1982). The Act required the Secretary to promulgate final regulations to implement the changes within 180 days, but it also authorized him to conduct test sales prior to promulgation of the regulations. § 5107, 101 Stat. 1330-259. The legislation stated that the "procedures for such sale shall be established in the notice of sale." § 5107(c), 101 Stat. 1330-256. The relevant provision of the notice of sale for the May 26, 1988, sale stated: "The balance of the bonus bid must be received by this office no later than close of business (4 p.m.) June 6, 1988." Notice/Competitive Oil and Gas Lease Sale/Montana, North Dakota and South Dakota (undated, unpaginated).

In his statement of reasons appellant acknowledges that his payment was not made until June 7, 1988, but asserts that it was timely because he relied upon proposed regulations which stated that payment of the balance of the bonus bid was to be made within 10 working days. Appellant states that he did not see a copy of the notice of sale prior to the sale and that none were available by the time he arrived. He further states that when the auctioneer announced that payments were due in 10 days, he understood him to mean 10 working days as stated in the proposed regulations.

The proposed regulations appellant refers to were published in the Federal Register on March 21, 1988. As appellant states, BLM proposed that a winning bidder submit "the balance of the bonus bid to the proper BLM office within 10 working days after the last day of the oral auction." 53 FR 9214, 9229 (Mar. 21, 1988) (proposed 43 CFR 3120.5-2(c)). At the time, the competitive leasing regulations allowed 30 days to sign and return lease forms along with the balance of the bonus bid as well as publication costs and the first year's lease rental. 43 CFR 3120.5(b) (1987). Prior to the enactment of FOOGLRA, however, BLM had proposed that the period be reduced to 15 days. 52 FR 22592, 22615 (June 12, 1987) (proposed 43 CFR 3120.6(a)). The stated reason for the reduction was that a General Accounting Office report had concluded that the United States suffered a considerable loss of interest revenues as a result of the 30-day period. 52 FR at 22600. Due to the enactment of FOOGLRA, the proposed reduction to 15 days was never promulgated. 1/ The allowance of 10 working days was adopted as proposed. 53 FR 22814, 22830, 22845 (June 17, 1988).

[1] It is true that appellant's payment was received on the day after the deadline stated in the Notice of Competitive Oil and Gas Lease Sale for the sale at issue. However, we also note the payment was timely under the explicit terms of the regulation promulgated to implement FOOGLRA. 43 CFR 3120.5-2(c), 53 FR 9229 (Mar. 21, 1988) (proposed), 53 FR 22845 (June 17, 1988) (final). 2/ The payment was made on the seventh working day, well within the 10 working days allowed by the regulation. Further, the payment was timely under the existing regulation regarding competitive oil and gas lease sales. 43 CFR 3120.5(b) (1987). In these circumstances, we must conclude BLM erred in rejecting appellant's bid because payment was received

1/ Some of the revisions BLM had proposed were included in the March 1988 proposed regulations. 53 FR 9214, 9218 (Mar. 21, 1988). Other portions of the proposed regulations were promulgated as final rules. 53 FR 17340 (May 16, 1988).

2/ It is conceivable that the author of the sale notice was seeking to implement the proposed (and, subsequently, final) regulation and failed to recognize the distinction between 10 days and 10 working days. We note that the 10th day following the sale fell on Sunday, June 5. As a general matter, when a filing deadline falls on a day the office is closed, the deadline is extended to the next business day, in this case June 6. 43 CFR 1821.2-2(e).

on the day after the deadline posted in the sale notice. We do not read the provision of FOGLRA at § 5107(c), 101 Stat. 1330-260, providing for test sales pursuant to procedures established in the notice of sale, as authorizing rejection of competitive bids which are in compliance with both the existing regulation and the published proposed regulation regarding competitive lease sales.

Further, we note that the Board has held in a number of cases that "[i]n the absence of countervailing public policy reasons or intervening rights, it may be appropriate to apply the amended version of the regulation to a pending matter where it benefits the affected party to do so." Alvin L. Terry, Jr., 110 IBLA 360, 361 (1989), quoting James E. Strong, 45 IBLA 386 (1980); Conoco, Inc., 102 IBLA 230, 233 (1988).

We believe application of the amended regulation is appropriate in this case. Appellant appears to have participated in the auction in good faith and made the payments required by his successful high bid. His payment for the balance of the bonus bid on June 7 was the seventh working day after the auction, well within the time provided by the amended regulation. Under the procedures established by both the notice of sale and the amended regulations, only the high bid for a parcel is considered by BLM, and if we were to affirm its rejection of appellant's bid, the consequence would be that the parcel would again be offered for competitive leasing. See 43 CFR 3120.5-3(c). Thus, only the rights of the appellant and the public interest are involved. The rights of other bidders at the auction are not at issue. Finally, we see no countervailing public policy reason which would preclude applying the amended regulation. Accordingly, we conclude that the balance of appellant's bonus bid should be deemed to have been timely received.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is reversed and the case is remanded for further processing and review of appellant's bid offer.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge